

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
CRAIG ALLEN CLARKE

Case No.04-34577

Chapter 7

Debtor.

**NOTICE AND MOTION
FOR RELIEF FROM STAY**

To:

CRAIG ALLEN CLARKE
3912 25TH ST SE
ROCHESTER, MN 55904
SSN: XXX-XX-5731
* Debtor *

DANIEL L RUFFALO
VANDERHEYDEN AND RUFFALO PA
PO BOX 6535
ROCHESTER, MN 55903
507-281-3949

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415
* U S Trustee *

MICHAEL S DIETZ
505 MARQUETTE BLDG
PO BOX 549
ROCHESTER, MN 55903
* Trustee *
[term 08/09/04]

CHARLES W RIES
MASCHKA RIEDY & RIES PLLP
PO BOX 7
MANKATO, MN 56002-0007
* Trustee *

U.S. Bank N.A., f/k/a Firststar Bank NA, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

1. The Court will hold a hearing on this motion at 9:30 a.m. on October 13, 2004, before Honorable Dennis D. O'Brien in Courtroom No. 228-A, United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

2. Any objection to the relief requested herein must be filed and delivered not later than October 8, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), as filed and served by mail not later than October 4, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN REPOSE IS TIMELY FILED, THE COURT MAY GRANT THE MORTION WITHOUT A HEARING.**

3. This motion is filed pursuant to Bankruptcy Rule 4001 and U.S. Bank N.A. seeks relief from the automatic stay U.S.C. § 362 with respect to certain real property owned by Debtor(s).

4. The petition commencing this Chapter 7 case was filed on August 5, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), 11 U.S.C. §362(d) and applicable rules. This is a core proceeding.

5. By mortgage dated November 16, 2001 in the original principal amount of \$126, 800.00, U.S. Bank N.A. holds a mortgagee's interest in the following real property (the "Property"):

That part of Section 17, Township 106 North, Range 13 West, Olmsted County, Minnesota, described as follows: Commencing at the East One Quarter corner of said Section 17, and running thence West along the North line of the Southeast Quarter of said Section a distance of 500.98 feet for a place of beginning, thence South parallel with the East line of said Section a distance of 241.77 feet, thence West parallel with the North line of said Southeast Quarter a distance of 91.68 feet, thence North a distance of 241.77 feet to the North line of said Southeast Quarter, thence East along the North line of said Southeast Quarter of said Section a distance of

88.32 feet to the place of beginning.

Address: 3912 25th Street, Rochester, Minnesota, 55904.

The Mortgage was filed in the offices of such County. A copy of the Mortgage is attached hereto as Exhibit A.

6. Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of April 2004 through September 2004 in a total amount exceeding \$4,170.50, including late charges, plus attorney's fees and costs. The outstanding balance due U.S. Bank N.A. under the terms of the note is \$87,379.61, plus interest, late fees and attorney's fees.

7. U.S. Bank N.A. does not have adequate protection of its interest in the Property, which constitutes cause, within the meaning of 11 U.S.C. § 362(d) (1), entitling U.S. Bank N.A. to relief from the automatic stay. In addition, U.S. Bank N.A. request that the stay imposed by Rule 4001 (a) (3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that U.S. Bank N.A. may immediately enforce and implement this Order granting relief from the automatic stay.

8. If testimony is necessary as to any facts relevant to this motion Kenneth J. Johnson will testify on behalf of Client.

9. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Rule 4001 (a) (3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that U.S. Bank NA may immediately enforce and implement this Order granting relief from the automatic stay.

8. If testimony is necessary as to any facts relevant to this motion Kenneth J. Johnson will testify on behalf of Client.

9. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, U.S. Bank NA respectfully moves the Court for an order modifying the automatic stay of 11 U.S.C. § 362 and for such other relief as may be just equitable.

Dated: 9/17/04

JOHNSON, BLUMBERG & ASSOCIATES, LLC

By: 

Kenneth J. Johnson #0246074
Attorneys for Movant
39 S. LaSalle Street, Suite 400
Chicago, IL 60603
Phone (312)541-9713

VERIFICATION

I, Ryan Cunningham, Bankruptcy Specialist of U.S. Bank NA, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: SEPTEMBER 17, 2004

Signed:


Ryan Cunningham, Bankruptcy Specialist
U.S. Bank NA



OFFICE OF COUNTY RECORDER
Olmsted County, Minnesota

I hereby certify that this document was filed in this office
on 1/29/2002 at 11:30:00 AM and was duly
recorded as document number **A-903587**
DANIEL J. HALL - County Recorder, by _____ Deputy.

Well Certificate: _____ Received _____ Not Required
Abstr. - yes _____ no _____
Fees: _____

Total \$20.00

PLEASE 17-106-13

After Recording Return To:
FIRSTAR BANK, NA
205 WEST 4TH STREET
CINCINNATI, OH 45202

Title Order No.: T001-808699

RETURN TO:
NATIONAL REAL ESTATE INFO SVCS
1801 EAST 79TH STREET, STE 4
BLOOMINGTON, MN 55425

LOAN #: 50036036

MORTGAGE

* THIS MORTGAGE ("Security Instrument") is given on **NOVEMBER 16, 2001.**
CRAIG CLARKE, A SINGLE MAN
** AKA Craig Allan Clarke*

The mortgagor is

("Borrower").

This Security Instrument is given to **FIRSTAR BANK, NA, A NATIONAL BANKING ASSOCIATION**

which is organized and

existing under the laws of **THE UNITED STATES OF AMERICA**
and whose address is **205 WEST 4TH STREET, CINCINNATI, OH 45202**

("Lender").

Borrower owes Lender the principal sum of **ONE HUNDRED TWENTY SIX THOUSAND EIGHT HUNDRED AND NO/100**
*****Dollars
(U.S. **\$126,800.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument
("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
DECEMBER 1, 2016, and for interest at the yearly rate of **8.190** percent. This Security Instrument
secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications
of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security
Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this
purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located
in **OLMSTED** County, Minnesota:
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.
AP #: 63.17.41.035890

which has the address of **3912 25TH STREET, ROCHESTER**

Minnesota **55904** ("Property Address");
[Zip Code]

[Street, City],

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and
fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All
of the foregoing is referred to in this Security Instrument as the "Property."

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BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

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6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.

Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted

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limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

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24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- ☐ Adjustable Rate Rider
- ☐ Graduated Payment Rider
- ☐ Balloon Rider
- ☐ VA Rider
- ☐ Condominium Rider
- ☐ Planned Unit Development Rider
- ☐ Rate Improvement Rider
- ☐ Other(s) [specify]
- ☐ 1-4 Family Rider
- ☐ Biweekly Payment Rider
- ☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

Craig Clarke 11-16-01
* CRAIG CLARKE
AKA
* Craig Allan Clarke

STATE OF MINNESOTA,

Olmsted

County ss:

* On this 16TH day of NOVEMBER, 2001, before me appeared
CRAIG CLARKE, A Single Man
* AKA Craig Allan Clarke

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that
he/she/they executed the same as his/her/their free act and deed.



[Signature]
Notary Public

My Commission Expires: 1-31-05

This instrument was prepared by
FIRSTAR BANK N.A.
205 WEST 4TH STREET
CINCINNATI, OH 45202

of

BALLOON RIDER
(Full Repayment Required at Maturity)

LOAN #: 50036036

THIS BALLOON RIDER is made this 16TH day of NOVEMBER, 2001, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure the Borrower's Note to FIRSTAR BANK, NA, A NATIONAL BANKING ASSOCIATION

(the "Lender") of the same date and covering the property described in the Security Instrument and located at: 3912 25TH STREET, ROCHESTER, MN 55904

The interest rate stated on the Note is called the "Note Rate". The date of the Note is called the "Noted Date". I understand the Lender may transfer the Note, Security Instrument and this Rider. The Lender or anyone who takes the Note, the Security Instrument and this Rider by transfer and who is entitled to receive payments under the Note is called the "Note Holder".

The Note is a Balloon Note which means that the amount of my monthly payment is insufficient to repay the Note in full by Maturity. Therefore, the final payment will be significantly larger than the other payments under the Note.

I understand that the Lender is under no obligation to refinance the Note or to modify the Note or reset the Note Rate or to extend the Note Maturity Date or the Maturity Date of this Security Instrument, and that I will have to repay the Note from my own resources or find a lender willing to lend me the money to repay the Note.

I further understand that should I not repay the Note on or before the Maturity Date, I will be in default, and the Lender will have the right to exercise all of its rights against me because of my default, including the right to foreclosure of the Security Instrument, or other remedies permitted by law.

BY SIGNING BELOW, BORROWER accepts and agrees to the terms and covenants contained in this Balloon Rider.

Craig Clarke 11-16-01
* CRAIG CLARKE

* Aka Craig Allan Clarke

BALLOON NOTE

(FIXED RATE)

THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.

NOVEMBER 16, 2001

MINNEAPOLIS,
[City]MINNESOTA
[State]3912 25TH STREET, ROCHESTER, MN 55904
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$126,800.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is **FIRSTAR BANK, NA, A NATIONAL BANKING ASSOCIATION.**

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of **8.190%**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the **1ST** day of each month beginning on **JANUARY 1, 2002.**

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on **DECEMBER 1, 2016,** I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
**205 WEST 4TH STREET
CINCINNATI, OH 45202**

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. **\$947.26.**

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

If I make a prepayment or partial prepayment prior to the third anniversary date of this Note, I will have to pay a prepayment charge. The prepayment charge will be as follows: For a prepayment of the loan in full between the date of execution of the Note and the third anniversary of the execution of the Note, one percent (1%) of the amount of the principal prepaid.

If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to these things.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.000%** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Craig Clarke 11-16-01
CRAIG CLARKE
SS#: 477-66-5731

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
CRAIG ALLEN CLARKE

Case No.04-34577

Debtor

Chapter 7

**MEMORANDUM FOR
MOTION FOR RELIEF FROM STAY**

U.S. Bank N.A., f/k/a Firststar Bank submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

U.S. Bank N.A. holds a valid, duly perfected mortgage on real property owned by Debtor(s). Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of April 2004 through September 2004 in a total amount exceeding \$6,914.98, including late charges, plus attorney's fees and costs. The outstanding balance due U.S. Bank N.A. under the terms of the note is \$124,480.03, plus interest, late fees and attorney's fees.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such (creditor)." 11 U.S.C. § 362(d)(1). The Bankruptcy Code states that adequate protection may be provided by requiring cash payments from the trustee to the entity seeking relief, by providing the entity seeking relief a replacement lien, or granting the entity seeking relief the indubitable equivalent of

their interest. § 361. Here, Debtor(s) failed to make the payments required by the note and mortgage for the months of April 2004 through September 2004 for pre- and post-petition payments. Because the validity of the mortgage has not been challenged, the default by the debtor has not been disputed, and the trustee has not opposed lifting the automatic stay, the default alone entitles U.S. Bank N.A. to relief from the automatic stay. *See in re Elikor*, 100 B.R. 180, 183 (Bkrtcy.M.D.Pa. 1989). Furthermore, there has been no attempt by Debtor(s) to otherwise provide U.S. Bank N.A. with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay.

Accordingly, U.S. Bank N.A. is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property. In addition, U.S. Bank N.A. requests that the stay imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that Client may immediately enforce and implement this Order granting relief from the automatic stay.

Dated: 9/16/04

JOHNSON, BLUMBERG & ASSOCIATES, LLC

By: ____/s/ Kenneth J. Johnson

Kenneth J. Johnson #0246074
Attorneys for Movant
39 S. LaSalle Street, Suite 400
Chicago, IL 60603
Phone (312)541-9713

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
CRAIG ALLEN CLARKE

Case No.04-34577

Chapter 7

Debtor.

CERTIFICATE OF SERVICE

To:

CRAIG ALLEN CLARKE
3912 25TH ST SE
ROCHESTER, MN 55904

DANIEL L RUFFALO
VANDERHEYDEN AND RUFFALO PA
PO BOX 6535
ROCHESTER, MN 55903

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415

MICHAEL S DIETZ
505 MARQUETTE BLDG
PO BOX 549
ROCHESTER, MN 55903

CHARLES W RIES
MASCHKA RIEDY & RIES PLLP
PO BOX 7
MANKATO, MN 56002-0007
MINNEAPOLIS, MN 55415

* U S Trustee *

I, KENNETH J. JOHNSON, an attorney, certify that I served this notice by mailing acopy to the above named parties at the addresses listed above by depositing the same in the U.S. mail at 39 S. LaSalle St., Chicago, Illinois at 5:00 p.m., on September 16, 2004.

/s/ Kenneth J. Johnson
Attorney For Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
CRAIG ALLEN CLARKE

Case No.04-34577

Chapter 7

Debtor.

**ORDER GRANTING
RELIEF FROM STAY**

This cause coming to be heard on the Motion of U.S. BANK N.A., through its attorneys, Johnson, Blumberg & Associates, LLC, for relief from the automatic stay, the Court being fully advised:

IT IS HEREBY ORDERED:

- A. That the Automatic Stay of the above case is hereby modified to allow U.S. BANK N.A. to proceed with foreclosure, eviction or any other action to preserve and enforce its rights with regard to the property commonly known as 3912 25th Street, Rochester, Minnesota, 55904.
- B. That the 10 day stay provision of Bankruptcy rule of Procedure 4001(a)(3) is waived.

DATE: _____

ENTERED:

Judge Dennis D. O'Brien

Kenneth J. Johnson #0246074
Johnson, Blumberg & Associates, LLC
Attorneys at Law
39 South LaSalle Street, Suite 400
Chicago, Illinois 60603
312-541-9710